



# REPORT TO FULL BENCH

*Fair Work Act 2009*

s.158 - Application to vary or revoke a modern award

## **Restaurant & Catering Industrial**

(AM2021/58)

Restaurants

DEPUTY PRESIDENT CLANCY

MELBOURNE, 20 SEPTEMBER 2022

*Restaurant Industry Award 2020 – award flexibility – proposed review of determinations varying Schedule AA— Classification Structure and Definitions and Schedule R—Award flexibility for COVID-19 Pandemic Recovery – conference held.*

[1] On 14 July 2021, the Full Bench issued a decision<sup>1</sup> varying the *Restaurant Industry Award 2020* to include two new schedules to assist employers and employees to recover from the pandemic: (*Schedule AA – Classification Structure and Definitions* and *Schedule R – Award flexibility for COVID-19 Pandemic Recovery*).<sup>2</sup>

[2] The Full Bench decided that these Schedules would operate for a period of 12 months, until 10 August 2022.<sup>3</sup>

[3] The Full Bench agreed with the United Workers Union (UWU) proposal in [\[2021\] FWCFB 4149](#) for a review into the variation determination, and determined that 9 months after the variation determination came into operation, a review would be conducted,<sup>4</sup> with a conference to consider the scope of the review:

“[153] The review will consider, among other things, whether the various concerns expressed by UWU members about the proposed variations have come to pass and the extent of utilisation of the various elements of the new Schedules. In relation to the last point, we would expect RCI to file evidence from the witnesses who have given evidence on behalf of RCI in these proceedings as to their utilisation of various elements of the new Schedules.”

[4] On 5 August 2022, the President published a [Statement](#) in which it was noted that nine months had elapsed since the decision of the Full Bench and the Full Bench considered it was

---

<sup>1</sup> [\[2021\] FWCFB 4149](#).

<sup>2</sup> [\[2021\] FWCFB 4149](#) at [145].

<sup>3</sup> [\[2021\] FWCFB 4149](#) at [146].

<sup>4</sup> [\[2021\] FWCFB 4149](#) at [152]

suitable to list this matter for conference, with the expectation that the UWU and Restaurant and Catering Industrial (**RCI**) would be expected to address the considerations referred to above, to the extent they are now material. The conference was listed before me and took place on 25 August 2022.

[5] Noting that my Chambers received advice that RCI has been de-registered and replaced by Restaurant and Catering Australia (**RCA**), appearances at the conference were limited to the RCA and the UWU. I invited the parties to offer any observations that they may wish to make about the Schedules and suggest any necessary further action.

[6] RCA advised that it had consulted with members and indicated that with the two Schedules having lapsed, it did not intend to seek to have them reinstated.<sup>5</sup> Further, the RCA advised that the take up of the changes available in the Schedules had not been as widespread as had been anticipated. Ultimately, in response to member feedback that the continuation of the Schedules was not a priority, the RCA had decided not to go ahead with any extension or reinstatement application.<sup>6</sup> Further, the RCA neither sought nor opposed the review.

[7] The UWU emphasised that it had opposed the Schedules at the time of their inclusion and advised that it was not aware of them being used. The UWU also noted the requirement in the Schedules for the UWU to be consulted in the event particular measures were to be implemented and advised that it had not been consulted by anyone in relation to the implementation of any such measures.<sup>7</sup> The UWU position was that there is nothing to review, and it expressed the view that the review may no longer be necessary. The UWU advised it would not oppose a decision by the Full Bench to not conduct the review.<sup>8</sup>

[8] There having been little, if any, take up of the provisions in the Schedules and with neither the RCA nor the UWU pressing for either the review to occur or the Schedules to be reinstated, the conduct of the previously foreshadowed review would seem to lack utility. Nor would there appear to be a requirement for the Full Bench to take any other further action.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

---

<sup>5</sup> [Transcript](#), PN13.

<sup>6</sup> [Transcript](#), PN15.

<sup>7</sup> [Transcript](#), PN20.

<sup>8</sup> [Transcript](#), PN22.